IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

CRL.A.No. 711 of 1999(C)

SC.61/1997 of ASSISTANT SESSIONS COURT, QUILANDY

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APPELLANT:

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

RESPONDENT:

NADUVILAKKANDY AZEEZ, KOTTAYIL MEETHAL AZEEZ.

BY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.711 OF 1999 (C)

Dated this the 6th day of December, 2006

JUDGMENT

This appeal is filed against the order of acquittal passed by the Sessions Court acquitting respondent. Respondent was charge sheeted for the offences punishable under Sections 143, 147,148 and 436 read with Section 149 of the Indian Penal Code.

2. Prosecution case is that, on 17.1.1992 at about 8 p.m, the above accused along with others formed themselves into an unlawful assembly, armed with deadly weapons, at a place called Avala, within the jurisdiction of the Meppayur Police Station and set fire to the house of one Sreedhara Kurup and thereby destroyed the house causing a loss of Rs.1 lakh. PW6 is the de facto complainant. PW7 is his wife and PW3 is his son. PW6, de facto complainant has not seen the incident. PW7 has not identified the accused. PWs.1 and 2 are stated to be independent witnesses. It has come out in evidence that

there was group clashes between Marxist party and Muslim league and several cases were registered. PWs.1 and 2 were activists of Marxist party and accused was of Muslim league. PWs.1 and 2 were chance witnesses and their evidence is highly interested. Their presence at the place was doubtful and trial judge who has seen the demeanor of the witnesses did not believe them. PW3, son who stated to have seen the accused at the electric light of the top of his house. However he was sitting inside the house. He has no previous acquaintance with the accused. Ext.P2 is the scene mahazar which reveals that there is no light in the place of occurrence. He has stated before the police that he identified the accused because of the light from the top of his house. Court below further noticed that no weapon alleged to have used by the accused were recovered. Prosecution was not able to show that more than five persons formed into an unlawful assembly and even though charges were filed read with Section 149 of I.P.C. only two persons were charge sheeted. Considering the totality of evidence, the trial court found that the identification of the accused was not made out. The case against the

accused were not proved beyond reasonable doubt and finding of facts entered by the trial court is fully justifiable on the evidence on record.

So far notice were not served on the respondents. From the evidence available, I am of the view that trial court has taken a possible view. Hence there is no ground to interfere in the order of acquittal and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.711 OF 1999 (C)

JUDGMENT

6th December, 2006